App. F. IX-4

Previous References

1939.
(9)
Legis

File No. 19-39
Serial Nos. 15-16

Later References.

PRESERVED

(11)

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. Two only

Part B for April 1940

SUBJECT.

Application of Foreigners Act to Mysore

Jours

The Secretary to the Hon'ble the Resident

Confidential F. 170-39 (W)

Extending with the Foreigners Act II of 1940 may be applied mutatis mutandis to Places of Foreigners Ordinance 1939.

The Foreigners ordinance 1939 applies to Myore for short time by efflux of time by 1st March 1940. Act no XVI of 1940 was accordingly enacted under section 16 of the LC Act on the lines of the Foreigners Bill of British India which is now the Foreigners Act II of 1940. The British Indian Act was not applied mutatis mutandis since the measure was only in the stage of a Bill when the Foreigners ordinance expired here (1st of March). A notification also has been issued applying to Myore all foreigners orders from time to time made in British India

If approved the Residency will be informed that action has already been taken by enacting Act XVII and a Reference will be made to the notification also copy of the Act will be sent to Government with a draft

Sd
12.4.40.

The reply to this communication should be addressed to the Secretary to the Resident in Mysore, Bangalore, by designation and not by name.

CONFIDENTIAL. No. F.170-39/W.

6747/39
Legis 19-39-15

FROM

THE SECRETARY TO THE HON'BLE THE RESIDENT IN MYSORE.

To

The Secretary to the Government of
His Highness the Maharaja of Mysore,
Law Department, Bangalore.

Hm
2
9/4

Dated Bangalore, the 8th April *194* 0.

Expiry of Foreigners Ordinance and application of the Foreigners Act, 1940 (II of 1940).

SIR,

I am directed to refer to my letter No.F.170-39/W, dated the 23rd February 1940.

2. I enclose a copy of the Foreigners Act, 1940 (II of 1940). His Excellency the Crown Representative would be glad if the Government of Mysore would apply it to the Mysore State in place of the Foreigners Ordinance, 1939.

3. I request you to send me a copy of the notification when issued.

(*Published at pages 4-7 of Gazette of India dated 2nd March 1940. Copy will follow).

ACT No. II OF 1940.

[PASSED BY THE INDIAN LEGISLATURE.]

(Received the assent of the Governor General on the 23rd February, 1940.)

An Act to provide for the imposition of restrictions on foreigners.

WHEREAS it is expedient to provide for the imposition of restrictions on the entry of foreigners into British India, their presence therein and their departure therefrom;

It is hereby enacted as follows :—

Short title, extent and duration.

1. (*1*) This Act may be called the Foreigners Act, 1940.

(*2*) It extends to the whole of British India.

(*3*) It shall be in force during the continuance of the present war and for a period of six months thereafter.

Definitions.

2. In this Act,—

(*a*) "foreigner" has the meaning assigned to it in the Foreigners Act, 1864, except that it does not include—

(*i*) any ruler or subject of any Indian State ; or

(*ii*) any native of the tribal areas ;

(*b*) "prescribed" means prescribed by orders made under this Act ;

(*c*) "specified" means specified by direction of a prescribed authority.

Power to make orders.

3. (*1*) The Central Government may, by order, make provision, either generally with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner, for prohibiting, regulating or restricting the entry of foreigners into British India or their departure therefrom or their presence or continued presence therein.

(2) In particular, and without prejudice to the generality of the foregoing power, orders made under this section may provide that the foreigner—

(*a*) shall not enter British India, or shall enter British India only at such times and by such route and at such port or place and subject to the observance of such conditions on arrival as may be prescribed ,

(*b*) shall not depart from British India or shall depart only at such times and by such route and from such port or place and subject to the observance of such conditions on departure as may be prescribed ;

(*c*) shall not remain in British India, or in any prescribed area therein

(*d*) shall remove himself to, and remain in, such area in British India as may be prescribed ;

(*e*) shall comply with such conditions as may be prescribed or specified—

(*i*) requiring him to reside in a particular place

(*ii*) imposing any restrictions on his movements

(*iii*) requiring him to furnish such proof of his identity and to report such particulars to such authority in such manner and at such time and place as may be prescribed or specified ;

(*iv*) requiring him to allow his photograph and finger impressions to be taken and to furnish specimens of his hand-writing and signature to such authority and at such time and place as may be prescribed or specified ;

(*v*) prohibiting him from association with persons of a prescribed or specified description ;

(*vi*) prohibiting him from engaging in activities of a prescribed or specified description ,

(*vii*) prohibiting him from using or possessing prescribed or specified articles ; or

(*viii*) otherwise regulating his conduct in any such particular as may be prescribed or specified ;

(*f*) shall enter into a bond with or without sureties for the due observance of, or as an alternative to the enforcement of, any or all prescribed or specified restrictions or conditions ; or

(*g*) shall be arrested and detained or confined ;

and may make provision for such incidental and supplementary matters as may, in the opinion of the Central Government, be expedient or necessary for giving effect to this Act.

Internees.

4. (*1*) Any foreigner (hereinafter referred to as an internee) in respect of whom there is in force any order made under clause (*g*) of sub-section (*2*) of section 3, directing that he be detained or confined, shall be detained or confined in such place and manner and subject to such conditions as to maintenance, discipline and the punishment of offences and breaches of discipline as the Central Government may from time to time determine.

(*2*) No person shall—

(*a*) knowingly assist an internee to escape from custody or knowingly harbour an escaped internee ; or

(*b*) give an escaped internee any assistance with intent thereby to prevent, hinder or interfere with the apprehension of the internee.

(*3*) The Central Government may, by order, provide for regulating access to, and the conduct of persons in, places in British India where internees are detained and for prohibiting or regulating the despatch or conveyance from outside such places to or for internees therein of such articles as may be prescribed.

(*4*) No proceedings shall be taken by virtue of sub-section (*2*) or sub-section (*3*) against any person in respect of any act done by him when he is himself an internee.

5. (*1*) No foreigner who was in British India on the date on which this Act came into force shall, while in

(2) Where, after the date on which this Act came into force, any foreigner carries on or purports to carry on (whether alone or in association with any other person) any trade or business under any name or style other than that under which that trade or business was being carried on immediately before the said date, he shall, for the purposes of sub-section (1), be deemed to be using a name other than that by which he was ordinarily known immediately before the said date.

(3) In relation to any foreigner who, not ha in British India on the date on which this Act force, thereafter enters British India, sub-se and (2) shall have effect as if for any reference sub-sections to the date on which this Act c force there were substituted a reference to the which he first enters British India thereafter.

(4) For the purposes of this section—

(a) the expression " name " includes a surname, and

(b) a name shall be deemed to be changed if the spelling thereof is altered.

(5) Nothing in this section shall apply to the assumption or use—

(a) of any name in pursuance of a Royal licence ; or

(b) by any married woman, of her husband's name.

6. Any District Magistrate and any Commissioner of Police or, where there is no Commissioner of Police, any Superintendent of Police, may, for any purpose connected with the enforcement of this Act or any order made thereunder, enter, with such assistance as he may think fit, any vessel or aircraft at any port or place in British India and may—

(a) direct the master of the vessel or the pilot of the aircraft, as the case may be,—

(i) before any passenger disembarks, or before the vessel or aircraft leaves such port or

place, as the case may be, to furnish a list in writing of the passengers who are on board or who have been carried on board at any time since the vessel or aircraft commenced its journey, or who have signified their intention of departing from British India on board such vessel or aircraft, setting out the ports or places at which they embarked, the ports or places of their disembarkation or intended disembarkation, and such other particulars as may be prescribed, and

i) to answer to the best of his ability any question relating to the passengers who are on board or who have disembarked in any part of British India ; and

if any foreigner seeking to enter British India on board such vessel or aircraft does not give satisfactory reasons for entering British India, either—

) refuse to allow such foreigner to disembark from such vessel or aircraft, or

i) place him under such restraint as may be prescribed or specified.

any question arises with reference to this Act or any order made or direction given thereunder, whether any person is or is not a foreigner or is or is not a foreigner of a particular class or description, the onus of proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall, notwithstanding anything contained in the Indian Evidence Act, 1872, lie upon such person.

8. The Central Government may, by order, declare that any or all of the provisions of this Act or the orders made thereunder shall not apply, or shall apply only with such modifications or subject to such conditions as may be specified, to or in relation to any individual foreigner or any class or description of foreigner.

9. (*1*) Any authority empowered by or under or in pursuance of the provisions of this Act to give any direction or to exercise any other power, may, in addition to

any other action expressly provided for in this Act, take, or cause to be taken, such steps and use, or cause to be used, such force as may, in its opinion, be reasonably necessary for securing compliance with such direction or for preventing or rectifying any breach thereof, or for the effective exercise of such power, as the case may be.

(*2*) Any police officer may take such steps and use such force as may, in his opinion, be reasonably necessary for securing compliance with any order made or direction given under or in pursuance of the provisions of this Act or for preventing or rectifying any breach of such order or direction.

(*3*) The power conferred by this section shall be deemed to confer upon any person acting in exercise thereof a right of access to any land or other property whatsoever.

10. Any authority upon which any power to make or give any direction, consent or permission or to do any other act is conferred by this Act or by any order made thereunder may, unless express provision is made to the contrary, in writing authorise, conditionally or otherwise, any authority subordinate to it to exercise such power on its behalf, and thereupon the said subordinate authority shall, subject to such conditions as may be contained in the authorisation, be deemed to be the authority upon which such power is conferred by or under this Act.

11. (*1*) Any person who attempts to contravene, or abets, or attempts to abet, or does any act preparatory to, a contravention of, the provisions of this Act or of any order made or direction given thereunder, or fails to comply with any direction given in pursuance of any such order, shall be deemed to have contravened the provisions of this Act.

(*2*) Any person who, knowing or having reasonable cause to believe that any other person has contravened the provisions of this Act or of any order made or direction given thereunder, gives that other person any assistance with intent thereby to prevent, hinder or otherwise interfere with his arrest, trial or punishment for the said contravention, shall be deemed to have abetted that contravention.

(*3*) The master of any vessel or the pilot of any aircraft, as the case may be, by means of which any foreigner enters or leaves British India in contravention of any order made under, or direction given in pursuance of, section 3 shall, unless he proves that he exercised all due diligence to prevent the said contravention, be deemed to have contravened this Act.

12. If any person contravenes the provisions of this Act or of any order made thereunder, or any direction given in pursuance of this Act or such order, he shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine ; and if such person has entered into a bond in pursuance of clause (*f*) of sub-section (*2*) of section 3, his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof, or show cause to the satisfaction of the convicting Court why such penalty should not be paid.

13. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

14. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of the Foreigners Act, 1864, the Registration of Foreigners Act, 1939, and of any other enactment for the time being in force.

15. (*1*) The Foreigners Ordinance, 1939, is hereby repealed.

(*2*) Notwithstanding such repeal, all orders made, directions given, things done and action taken under the said Ordinance, shall be deemed to have been made, given, done or taken under the provisions of this Act as if this Act had come into force on the 26th day of August, 1939, references to the said Ordinance in any rule made under any enactment shall be construed as references to this Act, and offences committed against or proceedings commenced under the said Ordinance may be punished or may be continued and completed as if such offences were committed against or such proceedings were commenced under this Act.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

Dated, Bangalore, 17th April 1940.

No. Lo/1372 EC 1

CONFIDENTIAL.

From

The Chief Secretary to the Government of His Highness the Maharaja of Mysore.
Law Department.

To

The Secretary to the Hon'ble the Resident in Mysore.

Sir,

Expiry of Foreigners Ordinance and application of the Foreigners Act (II of 1940)

I am directed to acknowledge the receipt of your Confidential letter No.F.170-39/W dated 8th April 1940 on the above subject and to state that as the Foreigners Ordinance as applied to Mysore expired by efflux of time by the 1st March 1940, Act No.XVI of 1940 (The Foreigners Act, 1940) was passed here on the lines of the Foreigners Bill (as it then was) of British India. A copy of the Act is forwarded herewith for reference. A notification also has since been issued applying to Mysore mutatis.mutandis all Foreigners Orders from time to time made in British India under the Foreigners Act II

I have the honor to be,

Sir,

Your most obedient servant,

17/4

Secretary to Government
Law Department.

The Secretary to the Hon'ble the Resident
in Mysore, Bangalore.

Sir,

Expiry of Foreigners Ordinance and
application of the Foreigners Act
(II of 1940)

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I have 'etc.,

Secretary to Governme
Law Department